



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed January 21, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on February 18, 2014, at Milwaukee, Wisconsin.

The issues for determination are whether there is jurisdiction to address the merits of Petitioner's appeal and if so, whether Milwaukee Enrollment Services (the agency) correctly calculated Petitioner's income for purposes of determining her Foodshare Benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Simone Johnson, Income Maintenance Specialist II
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed a new application for FoodShare benefits on May 20, 2013. (Exhibit 2, pg. 1)

3. On June 4, 2013, the Petitioner went to the agency and reported that she was working 32 hours per week, Monday through Friday, 8:00 a.m. to 4:00 p.m. Based upon this information, the agency approved the Petitioner for child care benefits. (Exhibit 2, pg.)
4. On June 4, 2013, the agency sent Petitioner a notice indicating that her FoodShare benefits would be reduced from \$622 per month to \$90.00 per month, effective July 1, 2013. (Exhibit 2, pg. 23)
5. On July 15, 2013, the agency sent Petitioner a notice indicating that her FoodShare benefits would be increased from \$90.00 per month to \$290.00 per month, effective August 1, 2013 because her household income increased. (Exhibit 2, pg. 29)
6. On September 9, 2013, the agency sent Petitioner a notice indicating that her FoodShare benefits would be increased from \$290.00 per month to \$293.00 per month, effective October 1, 2013. (Exhibit 2, pg. 34)
7. On October 28, 2013, the agency sent Petitioner a notice that her FoodShare benefits would be increase again, to \$302.00 per month beginning November 1, 2013. It appears this increase was due to Petitioner's report that her shelter expense went up. (Exhibit 2, pg. 7 and pgs. 40-41)
8. On October 21, 2013, the agency sent Petitioner a reminder that she needed to complete her Six Month Report Form. (Exhibit 2, pg. 39)
9. On October 28, 2013, the agency also sent Petitioner a notice indicating that it was restoring \$45.00 in benefits for November 2013. For reasons not made clear in the record, the agency only issued \$257 in FoodShare benefits to Petitioner for November, which was less than the \$302 she was entitled to receive per the October 28, 2013 notice. (Exhibit 2, pgs. 7 and 46)
10. On January 13, 2014, the Petitioner completed a Six Month Report Form and indicated in the form that she was still working for [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Exhibit 2, pgs. 17-22) Petitioner made another report that her employment ended. (Exhibit 2, pg. 8)
11. On December 18, 2013, the agency sent Petitioner a notice indicating that her FoodShare benefits would be ending, effective January 1, 2014, because her six month report form was either missing or incomplete. The notice further stated that she needed to complete the form by December 31, 2013, if she wanted to continue receiving benefits. (Exhibit 2, pgs. 48-49)
12. On January 14, 2014, the Petitioner received \$375 in FoodShare benefits and on January 17, 2014 she received \$613 in FoodShare benefits. (Exhibit 2, pg. 7)
13. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 21, 2014. (Exhibit 1)

DISCUSSION

The Federal Regulations state the following with regard to appeal deadlines:

1. A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days.

A State / agency action includes a refusal to restore benefits lost more than 90-days, but less than 1 year prior to the recipient's request to restore the benefits.

2. "In addition, at any time within a certification period, a household may request a fair hearing to dispute its current level of benefits."

7 CFR 273.15(g)

The Food Share Wisconsin Handbook echoes the Federal Regulations stating:

1. A fair hearing must be requested within 90 days from the first day that a specific agency action impacted their FoodShare benefits.
2. A fair hearing may be requested at any time within a certification period if a food unit disagrees with their current amount of Food Share benefits.

FoodShare Wisconsin Handbook (FSH) §6.4.1

The Petitioner filed an appeal on January 21, 2014 to contest the FoodShare benefits she received from March 2013 through December 2013.

I. Benefits Effective prior to July 1, 2013

Any agency action that occurred on or before June 30, 2013 cannot be appealed, because it is outside the 90-day time limit. In addition, there is no indication that the agency refused any request to restore benefits during the 90-days prior to filing her January 21, 2014 appeal. Finally, Petitioner's appeal of benefits received prior to July 1, 2013 do not fall into the stated exception to the 90-day rule, because those benefits fall outside the current certification period, which appears to have begun in July 2013, given that Petitioner's Six Month Report Form was due by December 31, 2013. Consequently, per the Federal Regulations cited above and FSH §6.4.1, there is no jurisdiction to hear an appeal disputing benefits received prior to July 1, 2013.

II. Benefits Effective July 1, 2013

Effective July 1, 2013, the agency acted to reduce Petitioner's benefits from \$622 per month to \$90 per month. Petitioner's January 21, 2014 appeal of the reduction of benefits is outside the 90-day appeal period and therefore, untimely. Petitioner's appeal does not fall under the exception of appealing a current level of benefits during a certification period, because the \$90 benefit level is not Petitioner's current level of benefits. As of January 17, 2014, her current benefit level was \$613.00 per month.

The remaining issue is whether this is a refusal to restore benefits that occurred during the 90-days prior to Petitioner filing her appeal on January 21, 2014. Looking at the case comments, Exhibit 2, pg. 8, it does not appear that the agency denied a request to restore benefits during the 90-days prior to Petitioner filing her appeal. As such, the issue was not ripe for appeal at the time the Petitioner filed her appeal.

However, given the agency's response to Petitioner's appeal, it is clear that the agency believes it acted correctly and is now refusing Petitioner's request to restore the benefits. Technically, Petitioner should file a new appeal of this action. However, in the interests of judicial economy, the issue of whether the agency correctly refused to restore benefits will be addressed here.

FoodShare Wisconsin Handbook (FSH)§7.4.1.1, states that benefits may be restored when a FoodShare group received fewer benefits that it was entitled to receive, "if the group did not cause the underissuance.." and if the under-issuance occurred less than 12 months before it was discovered.

In the case at hand, the Petitioner asserts that she was under-issued FoodShare benefits effective July 1, 2013, because the agency incorrectly calculated her income.

The June 4, 2013 notice indicates that the agency counted income from [REDACTED] (\$640 bi-weekly), unemployment insurance benefits (\$103 weekly) and a child's Supplemental Security Income (\$793.78 per month). *See Exhibit 2, pg. 26*. The Petitioner asserts that she stopped working at [REDACTED]

██████████ effective February 28, 2013. The Petitioner asserts that she timely reported this change.

There is no evidence in the record to support Petitioner's contention that she timely reported the loss of her employment. On the contrary, the case comments indicate that on June 4, 2013, the date the agency determined Petitioner's FoodShare benefits, she went to the agency to seek a child care authorization and stated that she was still working:

MECA walk in CC auth completed for 1 NSA child for 42 hours a week from 6/2/13-1/4/14...The PP works 32 hrs a week M-F from 8A-4P She was given 10 hours of travel time due to her taking public trans...

Exhibit 2, pg. 9

In addition, the Petitioner submitted conflicting documentation with her January 21, 2014 appeal. (See Exhibit 1 and Exhibit 2, pgs. 10 and 11) Exhibit 2, pg. 11 is a document from ██████████ indicating that Petitioner's employment was terminated effective February 28, 2013. However, Exhibit 2, pg.10 is a document on Lending Hands letterhead, signed by Petitioner, indicating that effective August 2013, she was no longer working for ██████████

If a loss of benefits occurred effective July 1, 2013, Petitioner was likely the primary cause, because Petitioner did not timely and clearly account for her employment / loss of employment with ██████████. Thus, per *FSH §7.4.1.1*, the agency correctly denied Petitioner's request to restore those lost benefits.

III. Benefits effective August 1, 2013

With regard to the change in Petitioner's benefits from \$90 to \$290, effective August 1, 2013, Petitioner's appeal is outside the 90-day time period and does not fall into an exception to the 90-day rule; there were no lost benefits to be restored and the \$290 benefit level, is not Petitioner's current benefit level. As such, Petitioner's appeal is untimely and there is no jurisdiction to consider the merits of Petitioner's appeal of this change in benefits.

Even if jurisdiction did exist to review the merits of Petitioner's appeal, I would find that the agency acted correctly. Petitioner again asserts that the agency incorrectly counted her income from ██████████ and Petitioner asserts that she stopped working in February 2013.

Petitioner's August benefits were based upon the income reported in July 2013. At least one of the documents provided by Petitioner indicates that she was still working at ██████████ until August 2013. (See Exhibit 1, pg. 3; Exhibit 2, pg. 10) If there was a loss of employment prior to August 2013, there is no indication in the record that Petitioner timely reported it to the agency. On the contrary, Petitioner was approved for childcare benefits through January 2014. As such, if any loss of benefits occurred, it was likely due to the Petitioner's actions and cannot be restored per *FSH §7.4.1.1*

IV. Benefits effective October 1, 2013

With regard to the change in Petitioner's benefits from \$290 to \$293, effective October 1, 2013, the Petitioner's appeal is outside the 90-day time period and does not fall into an exception; there were no lost benefits to be restored and the \$293 benefit level is not Petitioner's current benefit level. As such, there is no jurisdiction to consider the merits of Petitioner's appeal of this change in benefits.

Even if jurisdiction did exist to review the merits of Petitioner's appeal, I would find that the agency acted correctly. There is no indication that Petitioner timely reported any loss in employment. On the contrary,

she was approved for childcare benefits through January 2014. As such, any loss of benefits was due to the Petitioner's actions and cannot be restored per *FSH §7.4.1.1*

V. Benefits effective November 1, 2013 through December 31, 2013.

Petitioner again asserts that the agency incorrectly counted her income, because it included income from [REDACTED]. However, as discussed above, the record does not support Petitioner's claim that she timely reported the loss of her employment. On the contrary, in June 2013, the Petitioner reported that she was still working and as a result, the agency approved her for child care benefits. (Exhibit 2, pg. 9)

Thus, the agency made its allotment determination upon the best information that it had and acted correctly when it determined Petitioner's allotment to be \$302.00 per month, effective November 1, 2013, on ward.

CONCLUSIONS OF LAW

1. Petitioner's appeal concerning her FoodShare benefits prior to July 1, 2013 is not timely, so there is no jurisdiction to address the merits of Petitioner's appeal of those matters.
2. The agency correctly refused to restore benefits Petitioner lost, effective July 1, 2013.
3. There is no jurisdiction to address the merits of Petitioner's appeal of her benefits effective August 1, 2013, because her appeal is untimely.
4. There is no jurisdiction to address the merits of Petitioner's appeal of her benefits effective October 1, 2013, because her appeal is untimely.
5. The agency correctly calculated Petitioner's income when determining her FoodShare allotment for November and December 2013, based upon the best information it had.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

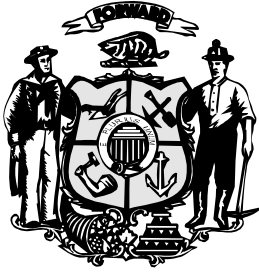
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of March, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 14, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability